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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

..

:: JUDGMENT ::

State of Rajasthan Vs. Bagdu Dass

S.B. CIVIL MISC. APPEAL NO.571/1994.

Against the award dated 26.02.1994 made by the Motor Accidents Claims Tribunal, Nimbahera in Claim Case No.1/1993 (Bagdu Das Vs. State).

Date of Judgment :::: 23.08.2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. B.L. Bhati, AGA for the appellant.
Mr. Pradeep Thanvi for
Mr. Ravi Bhansali, for the respondent.

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BY THE COURT:

This is owner's appeal questioning the award dated 26.02.1994 made by the Motor Accidents Claims Tribunal, Nimbahera in Claim Case No.1/1993 whereby the Tribunal has awarded compensation in the sum of Rs.1,17,000/- to the respondent-claimant.

The claim application was submitted by the claimant with the submissions that on 16.07.1983 when he was waiting for bus at Nimbahera for going to village Kadmali, a truck bearing

registration No. RRB 2766 approached and at the asking of the driver of the truck he alongwith six other persons boarded the truck and paid fare of Rs.1.50 to the truck driver. On a bridge near Manda village, the truck driver while driving rashly and negligently suddenly applied the brakes and the truck capsized causing injuries to the occupants that resulted in death of four persons, three on the spot and another in Government Hospital Chittorgarh.

The claimant averred that he too sustained injuries on his arm and his left leg was crushed; that he remained hospitalised at Government Hospital, Chittorgarh from 16.07.1983 to 25.07.1983; his leg was badly wounded and he was removed to Udaipur for treatment; on 25.07.1983 at Government Hospital, Udaipur his leg was amputated above the knee and then he remained hospitalised for one month and 15 days and he was again hospitalised on 13.09.1983 in Government Hospital at Mandsaur and was again operated; this apart, his right arm was also fractured and sustained a bend. The claimant, stating his age at 40 years and being the only bread-earner of his family of wife and six children, claimed compensation against the owner and driver of the truck in the sum of Rs.1,17,000/- with Rs.90,000/- towards loss of income, Rs.12,000/- for treatment expenditure and Rs.15,000/- towards non-pecuniary loss.

The non-applicant No.1, present appellant, owner of the vehicle in its reply denied the claim averments in toto and denied the allegation of the claimant that he was occupying the truck or that the accident occurred for rash and negligent driving. The driver of the vehicle, non-applicant No.2 also denied the claim averments and denied his taking any other person in the truck in question or driving the vehicle rashly and negligently as alleged.

On the pleadings of the parties, the Tribunal framed the following issues for determination of the questions involved in the case:

> "1. आया विपक्षी संख्या-2 ने बेपरवाही से व तैजी से ट्रक चलाकर प्रार्थी बगदुदास को चौंटे पहुंचाई, जिससे प्रार्थी का बांया पैर घुटने के ऊपर से टुट गया व काट देना पड़ा व अन्य चौंटे आई ?
>
> 2. आया प्रार्थी विपक्षीगण से क्षतिपूर्ति के रूप में मांगी गई राशि पा सकता है ?
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> 3. दादरसी क्या होगी ?"

The claimant examined himself as PW-1 and Puran Mal, the person allegedly present at the site of accident and in whose presence the police prepared the site report, as PW-2. The claimant also examined Dr. R.D. Bhatt, the Medical Jurist at Government Hospital, Nimbahera in relation to the injury report prepared by him on 16.07.1983, as PW-3. The non-applicants examined Vikram Singh, driver of the vehicle involved in the

accident as DW-1, Manohar Singh, working as Assistant with the Public Health Engineering Department, Chittorgarh and an occupant of the vehicle at the time of accident, as DW-2 and Durga Shanker Joshi, posted as Assistant Engineer in Public Health Engineering Department, Chittorgarh at the time of accident, as DW-3.

In the documentary evidence, the claimant, inter alia, produced the bills of treatment expenditure as Ex.P/1 to P/33, Discharge Ticket from Mandsaur Hospital as Ex.P/34, Certificate of amputation of leg as Ex.P/35 and the injury report Ex.P/36. The non-applicants on the other hand produced the First Information Report lodged on 16.07.1983 as Ex. D/1.

The learned Judge of the Tribunal after examining the entire material on record came to the conclusion in issue No. 1 that the injured-claimant sustained injuries in the accident in question when the truck capsized due to rash and negligent driving by the driver Vikram Singh and ultimately the claimant had to suffer amputation of leg. In issue No.2, the learned Judge of the Tribunal found the owner and driver of the vehicle liable for compensation. While quantifying compensation, the learned Judge accepted the claim of Rs.90,000/- towards loss of earning capacity, Rs.12,000/- towards treatment expenditure and Rs.15,000/- towards non-pecuniary loss and made an award in

the sum of Rs.1,17,000/- and also allowed interest at the rate of 12% per annum.

Assailing the award aforesaid, the owner of the vehicle, has filed this appeal and learned Additional Government Advocate Mr. B.L. Bhati has strenuously contended that the fundamental facts that the claimant was travelling in the truck in question at the time of accident and sustained injuries in the alleged accident have not been established on record and, therefore, the Tribunal has been seriously in error in deciding issue No.1 against the non-applicants and holding them liable for compensation. Learned Additional Government Advocate Mr. Bhati has further contended that the Tribunal has erred even while quantifying the compensation inasmuch as the Tribunal has accepted the claim as it is and has awarded a sum of Rs.1,17,000/- without examining the requirements of law and has not considered even the fact that the relevant disability certificate has not been produced so as to justify the claim of loss of earning capacity. Learned counsel Mr. Pradeep Thanvi appearing for the respondent-claimant has emphatically opposed and has submitted that from the evidence on record, it is clearly established that the truck in question at the time of accident was carrying more persons than the staff; and such fact is also borne out from the First Information Report as well as from the statements of the claimant and so also his witness PW-2 Puran

Mal. Learned counsel further submitted that it is precisely corroborated from the statements of PW-2 Puran Mal that the claimant-respondent was the person who got injured in the accident in question that occurred from the use of the truck of the appellant. Learned counsel further submitted that from the medical evidence produced on record, it is indisputably established that the claimant had suffered grievous injuries on leg and arm and had suffered amputation of leg above the knee resulting in substantial disablement and even if no certificate as such has been produced that cannot result in depriving the claimant of the amount of just compensation. Learned counsel submitted that the amount awarded by the Tribunal in the sum of Rs.1,17,000/- remains that of just compensation and, therefore, the award does not call for interference.

Having heard learned counsel for the parties and having examined the entire record of the case, this Court is of opinion that the impugned award calls for no interference and this appeal deserves to be dismissed.

The fact that the truck in question at the time of accident was carrying more and other persons than the departmental persons is amply established from the endorsement made by the Station House Officer on the FIR on the basis of the additional and further information supplied by Jeevan Singh, the Assistant concerned who was admittedly

travelling in the vehicle in question at the time of accident and who lodged the FIR. The contents of the information recorded by the SHO on the basis of submissions of the first informant Jeevan Singh read thus:

> "रिपोर्ट आज श्री जीवन सिंह S/o वीरदान सिंह जी चारण नि. उपड़ाबास PS बिलाड़ा जिला जोधपुर हाल सहायक वेदक प्रभारी ड्रिलिंग स्कावड उपखण्ड चित्तौड़गढ़ ने होस्पीटल निम्बाहेड़ा में पेश की ।
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> मजीद दरियाफ्त पर जाहिर किया कि हम चारों बैठे हुए थे । पीछे पाईप तथा डीज़ल टैंक था पिछे कितने बैठे थे मुझे नहीं मालूम मेरे को कुछ नींद आ गई थी नदी के वहां पर एकदम झटका लगा गाड़ी नदी में गिरती हुई सड़क पर आई और एकदम से झटका लगा और पुलिया पर आ खड़ी हुई मैंने कहा मारा बाद में एकदम से निकले गाड़ी तेज रफ्तार में ही थी ।
>
> ट्रक को श्री विक्रम सिंह चला रहा था गाड़ी में से कितने के लगी मुझे मालूम नहीं हम एकदम से बाडी की तरफ भागे तथा बाद में अस्पताल आए हैं । इस ट्रक से दो व्यक्ति मर गये हैं तथा चार के चोटें लगी हैं ।"

It is absolutely clear that the suggestion as attempted to be made by the driver that no other person except departmental persons were travelling in the vehicle in question is not correct. The indication of the fact that there were more persons than the staff does appear from the contents of the First Information Report itself where apart from the driver, four persons have been named with specific assertion that these

were the staff persons sitting on the front side in the truck. Apparently, some facts particularly of occupancy on the back side of the vehicle of the persons other than staff was attempted to be concealed. Be that as it may, there is no reason to disbelieve the recitals on the First Information Report as recorded by the Station House Officer with reference to the information supplied by Shri Jeevan Singh, the first informant that definitely shows extra number of persons getting injured in the accident. It is not the case of either of the parties that any person on the road or sideways too got injured on capsizing of the truck. There appears no reason to disbelieve the assertion of the claimant of his traveling in the truck at the time of accident and getting injured in the accident. Moreover, there remains significant omission on the part of the non-applicants in this case that the said Shri Jeevan Singh, though working in the department, has not been produced in evidence while the driver of the truck Vikram Singh has been produced as DW-1 and other occupant of the truck Manohar Singh has also been produced as DW-2. There is no reason as to why the said Shri Jeevan Singh who was admittedly an occupant of the truck in question and who lodged the FIR has not been produced? The facts emerging out of the FIR and the endorsement made thereat by SHO as noticed supra could have been explained only by the said Shri Jeevan Singh and for withholding this material witness,

an adverse inference is definitely required to be drawn against the non-applicants.

In view of the evidence as available on record and as omitted to be produced on record, this Court is of opinion that the conclusion reached by the Tribunal of the claimant being an occupant of the truck in question at the time of accident and getting injured because of capsizing of the truck seems to be a reasonable view available on preponderance of probabilities and cannot be said to be such a view that could not have been reached at all. In that view of the matter, this Court is clearly of opinion that there is no reason or justification to disturb such findings of the Tribunal and to arrive at a conclusion different and contrary in this appeal.

On the quantum of compensation, it is of course true that the award as made by the Tribunal is not based on sound principles and the Tribunal has proceeded to award the entire amount as claimed towards loss of earning capacity without considering the proportionate loss because of the injury in comparison to the overall earnings of the injured. However, the injured claimant was alleged to be earning about Rs.15/- per day as a labour; and from the medical reports particularly the certificate Ex.P/35, it is borne out that the claimant had suffered amputation at about mid thigh; and his age has consistently been given out at about 40 years at the time of accident.

Therefore, the amount awarded on account of loss of earning capacity, at Rs.90,000/-, in the overall circumstances of the case may appear wee bit on the higher side but cannot be said to be exorbitant and too excessive so as to warrant interference in appeal. The Tribunal has awarded medical expenditure in the sum of Rs.12,000/- and in view of the extensive injuries suffered by the claimant such amount cannot be said to be too excessive. The Tribunal has further awarded a sum of Rs.15,000/- towards non-pecuniary loss; and in the award made in the year 1994 in relation to the injury case of the year 1983, such amount also cannot be said to be too excessive.

It is further noteworthy that the Tribunal has not considered the other relevant components of loss including the dietary expenses and expenditure on the attendants that the claimant must have incurred in view of the extensive injuries suffered. The loss of amenities of life too deserves to be taken note of particularly with reference to amputation of leg above knee. In that view of the matter, in the overall circumstances of the case, the award in the sum of Rs.1,17,000/- cannot be said to be too excessive so as to warrant interference by the appellate court.

The appeal fails and is, therefore, dismissed. No costs.

(DINESH MAHESHWARI), J.

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